Submitted
by plaintiff
in Error
Oct. 27. 1880

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Swayne

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~302.~~ 44

JAMES HALL, PLAINTIFF IN ERROR,

vs.

THE STATE OF WISCONSIN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

FILED OCTOBER 15, 1877.

SUPREME COURT OF THE UNITED STATES.

No. 302.

JAMES HALL, PLAINTIFF IN ERROR,

VS.

THE STATE OF WISCONSIN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Wisconsin, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between James Hall, plaintiff, and The State of Wisconsin, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision 2 was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statue of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears: we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the thirty-first day of October, in the year of our Lord one thousand eight hundred and seventy-six.

Issued , 187 .

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Allowed by—

DAVID DAVIS,
Asso. Jus. S. C. U. S.

3 STATE OF WISCONSIN,
Supreme Court, ss:

The return to the within writ of error appears by the schedule hereto annexed.

The return of the justices of the supreme court of the State of Wisconsin.

Attest:
[SEAL.]

LA FAYETTE KELLOGG,
Clerk.

4 Pleas before the supreme court of the State of Wisconsin, at a term thereof begun and held at the capitol in Madison, the seat

of government of said State, on the second Tuesday, to wit, the eleventh day, of January, A. D. 1876.

Present, Edward G. Ryan, chief justice; Orsamus Cole and William P. Lyon, associate justices.

LA FAYETTE KELLOGG,
Clerk.

Be it remembered that heretofore, to wit, on the twelfth day of June, in the year of our Lord one thousand eight hundred and seventy-five, came into the office of the clerk of the supreme court of the State of Wisconsin James Hall, and filed in said court his certain complaint, according to the statute in such case made and provided, which said complaint is in the words and figures following, that is to say:

State of Wisconsin supreme court.

JAMES HALL, PLAINTIFF,
vs.
THE STATE OF WISCONSIN, DEFENDANT.

5 The complaint of the above-named plaintiff respectfully shows to this honorable court and alleges:

First. That under and by virtue of chapter 40 of the general laws of the State of Wisconsin, passed and enacted by the legislature of said State in the year 1857, the plaintiff, who is the same James Hall named in said act, did on the 29th day of May, 1858, enter into, make, sign, seal, and deliver to and with Alexander W. Randall, then governor of the State of Wisconsin, a contract, a copy of which is hereto annexed, marked A, and made part hereof, wherein and whereby the said plaintiff agreed to render and perform certain duties and services therein specified for the defendant, and in consideration thereof the said defendant agreed to pay to the plaintiff the sum of two thousand dollars per annum. That in and by its terms said contract was to continue and be in force from the day of the date thereof until the 3d day of March, 1863.

Second. That immediately after the execution and delivery of said contract the plaintiff entered upon the performance of the duties therein undertaken on his part to be performed, and that he continued in such performance, and in all things faithfully and well executed and discharged the duties until the end and expiration of the time therein specified for such performance, to wit, until the 3d day of March, 1863.

6 Third. This plaintiff was never at any time removed by the governor of said State for incompetency or neglect of duty, as provided by section 5 of said chapter 40 of the laws of 1857, nor was any such charge or complaint ever made or urged against him by the governor of said State.

Fourth. That said chapter 40 of the laws of 1857, in pursuance of which said contract was made, was in form repealed by an act of the legislature of the State of Wisconsin, approved March 21st, and published March 26th, 1862, said act being chapter 116 of the general laws of Wisconsin for the year 1862. That the plaintiff never at any time, directly or indirectly, assented to such attempted repeal, or to the impairing of the obligation of his said contract with the State of Wisconsin by virtue thereof, but on the contrary he protested against such repeal and steadily resisted the same, and continued after said repeal in the performance of his labors under said contract the same as before, and that for the year ending March 3d, 1863, and throughout said year he faithfully prosecuted and performed his work under said contract, devoting, without cessation, his time, skill, and energies thereto.

Fifth. That for the services performed by the plaintiff under said contract prior to the 3d day of March, 1862, he has been fully paid, but
7 that for the services performed thereafter, and for the year ending
March 3d, 1863, he has received no payment or compensation whatsoever. That on the 3d day of December, 1863, the plaintiff demanded payment for the year ending March 3d, 1863, from the defendant, but such payment was refused, and the defendant is justly and lawfully indebted to the plaintiff therefor in the sum of two thousand dollars, with interest thereon at the rate of seven per cent. per annum from the 3d day of December, 1863.

Sixth. That heretofore, to wit, on the 30th day of January, 1875, the plaintiff presented the foregoing claim in proper form by memorial to the legislature of the State of Wisconsin; that the said legislature refused to allow such claim, and the plaintiff, feeling himself aggrieved thereby, has brought this action.

Wherefore the plaintiff demands judgment against the defendant for the sum of two thousand dollars, and interest thereon at the rate of seven per cent. per annum from the 3d day of December, 1863, besides the costs of this action.

Dated June 10th, 1875.

DIXON, HOOKER AND PALMER,
Plaintiff's Attorneys, Milwaukee, Wis.

A.

This agreement, made this twenty-ninth day of May, one thou-
8 sand eight hundred and fifty-eight, between Alexander W. Ran-
dall, governor of the State of Wisconsin, on behalf of said State, of the one part, and James Hall, of Albany, one of the commissioners appointed with Ezra S. Carr and Edward Daniels, of Wisconsin, to make a geological survey of the State, by an act entitled "An act to provide for a geological and agricultural survey of the State," approved March 3d, 1857, of the second part: Witnesseth,

That whereas, in pursuance of said act, the said commissioners have arranged and distributed the functions of said survey by mutual agreement, therefore the said James Hall, under such arrangement and distribution, hereby agrees and binds himself, as such commissioners, to work out the general geology, the relations of the geology of this State with that of the surrounding States and the paleontology of the State, and properly represent the same upon a map or maps, sections, &c., and make the collections illustrative of the same, as contemplated in said act, and shall report annually on or before the first day of January of each year to the governor in connection with his co-commissioners.

The said Hall hereby agrees to devote his time and attention to the duties of his department, according to the division and distribution of labor, and in all things faithfully fulfill the obligations imposed upon him under said act. This contract to continue until the 3d day of March, A.
9 D. 1863, unless the said Hall shall be removed for incompetency
or neglect of duty, as provided by section five of said act, or unless a vacancy shall occur in his office by his own act or default.

And it is hereby agreed on the part of the said State of Wisconsin that the said Hall shall receive for his compensation and expenses, including the expense of his department of said survey, at the rate of two thousand dollars per annum. The said sum of two thousand dollars shall be in full of his salary as commissioner, assistants, laborers, his room rent, and all other expenses incident to his department of the said survey, exclusive of printing the annual reports of said commissioners. Provided that for such time as said Hall or his assistants shall not be engaged in the prosecution of his duties according to the terms of said act and of this contract, deductions shall be made, pro rata, from the sum of his annual compensation and expenses. The compensation and expenses to be drawn quarterly according to the terms of said act.

In testimony whereof the said James Hall has hereunto set his hand and seal, and the said Alexander W. Randall his name and seal as governor of the State of Wisconsin the day and year first above written.

JAMES HALL. [L. S.]
ALEXANDER W. RANDALL, [L. S.]
Gov. of Wis., for State of Wis.

Witnesses:
R. P. WHITEFIELD,
W. H. WATSON.

10 (Endorsed:) Supreme court State of Wisconsin. James Hall, plaintiff, vs. The State of Wisconsin, defendant. Complaint. Dixon, Hooker, and Palmer, pl'ff's att'ys.

Service of copy of within complaint admitted June 12, 1875.

A. SCOTT SLOAN,
Att'y-Genl.

Filed June 12, 1875.

L. F. KELLOGG,
Cl'k Sup. Court Wis.

And afterwards, and on the day above mentioned, the same being the 12th day of June, A. D. 1875, came the said James Hall by his attorneys, and filed in this office his certain notice to answer or demur, and also his certain bond for costs, which said notice to answer or demur and bond are in the words and figures following, that is to say:

State of Wisconsin supreme court.

JAMES HALL, PLAINTIFF,
against
THE STATE OF WISCONSIN, DEFENDANT.

You are hereby notified and required to answer or demur to the complaint in the above-entitled action, a true copy whereof is 11 hereto attached, and herewith served upon you, within a period of time not less than thirty days from the date of such service.

Dated June 12th, 1875.

Yours, &c.,

DIXON, HOOKER AND PALMER,
Pl'ff's Att'ys.

To Hon. A. SCOTT SLOAN,
Attorney-General State of Wisconsin.

(Endorsed:) Supreme court State of Wisconsin. James Hall, plaint-

iff. vs. The State of Wisconsin, defendant. Notice to answer or demur. Dixon, Hooker, and Palmer, pl'ff's att'ys.

Served June 12, 1875.

A. SCOTT SLOAN,
Att'y-Gen'l.

Filed June 12, 1875.

L. F. KELLOGG,
Clerk Sup. Court Wis.

Know all men by these presents, that we, Thomas B. Tyler, of Sparta, Monroe County, Wisconsin, and John H. Walrath, of the city and county of Milwaukee, Wisconsin, are held and firmly bound unto Ferdinand Knelne, as treasurer of the State of Wisconsin, and to his successors in office, in the sum of five hundred dollars, good and lawful money of the United States, to be paid to the said Ferdinand Knelne, as
12 treasurer as aforesaid, or to his successors in office, for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, dated the 10th day of June, 1875.

Whereas one James Hall, of the city and county of Albany, in the State of New York, is about to begin an action against the State of Wisconsin, in the supreme court of said State, for services rendered and performed by him for said State, under and by virtue of a contract made and entered into in pursuance of chapter 40 of the general laws of said State of Wisconsin, passed and enacted by the legislature of said State in the year 1857:

Now, therefore, the condition of the above obligation is such, that if the said James Hall shall well and truly indemnify the said State of Wisconsin against all costs that may accrue in said cause, and forthwith pay, or cause to be paid, to the clerk of said court all costs, in case he shall fail to prosecute his action, or to obtain a judgment against the State, then the above obligation to be void, otherwise to remain in full force and effect.

THOS. B. TYLER. [SEAL.]
J. H. WALRATH. [SEAL.]

Signed & sealed in presence of—
GEO. H. NOYES.
D. S. WEGG.

13 STATE OF WISCONSIN,
Milwaukee County, ss:

Thomas B. Tyler and John H. Walrath, being duly and severally sworn, each for himself, says he is worth the sum of five hundred dollars over and above all his debts, liabilities and property exempt by law from execution.

THOS. B. TYLER.
J. H. WALRATH.

Subscribed & sworn to before me this 10th day of June, 1875.

GEO. H. NOYES,
Notary Public, Milwaukee Co., Wis.

Approved by me this 10th day of June, 1875.

FERD. KNELNE,
State Treasurer.

(Endorsed:) Supreme court State of Wisconsin. James Hall, plaintiff, against The State of Wisconsin, defendant. Bond. Dixon, Hooker and Palmer, pl'ff's att'ys.

Filed June 12, 1875.

L. F. KELLOGG,
Clerk Sup. C't Wis.

14 And afterwards, to wit, on the 14th day of July, A. D. 1875, came the said State of Wisconsin by A. Scott Sloan, attorney-general, and filed its demurrer herein, in the words and figures following:

In supreme court, State of Wisconsin.

JAMES HALL, PLAINTIFF,
ag'st
THE STATE OF WISCONSIN, DEFENDANT.

The above-named defendant, the State of Wisconsin, by A. Scott Sloan, attorney-general of said State, demurs to the complaint of the said plaintiff, and specifies the following grounds of objection to said complaint:

1. That the said complaint does not state facts sufficient to constitute a cause of action.
2. That it appears upon the face of said complaint that no action has accrued to the said plaintiff by reason of the matters mentioned and set forth in said complaint at any time within six years next previous to the commencement of said action.

A. SCOTT SLOAN,
Att'y Gen'l.

(Endorsement:) In supreme court. James Hall vs. The State
15 of Wisconsin. Demurrer. A. Scott Sloan, att'y gen'l.

Service of within demurrer admitted this 9th day of July, 1875.

DIXON, HOOKER AND PALMER,
Att'ys for Pl'ff.

Filed July 14, 1875.

L. F. KELLOGG,
Clerk Sup. C't, Wis.

And afterwards, to wit, at the August term, A. D. 1875, of said court, on the fifty fifth day of the term, to wit, on the thirtieth day of December, in the year aforesaid, the following proceedings were had in said cause, that is to say:

And now, at this day, came the parties herein by their attorneys, and this cause having been fully argued by L. S. Dixon, esq., for the said plaintiff, and by A. Scott Sloan, esq., attorney-general, for the said defendant, and submitted, and the court not being now sufficiently advised of and concerning its decision herein, took time to consider of its opinion.

And afterwards, to wit, on the first day of February, A. D. 1876, the following further proceedings were had in said cause, in the words and figures following, that is to say:

JAMES HALL, PLAINTIFF.
vs.
THE STATE OF WISCONSIN, DEFENDANT.
} Complaint under the statute. Opinion by Lyon, J.

16 This cause came on to be heard on the demurrer of the said defendant to the complaint of the said plaintiff, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court that the said demurrer be, and the same is hereby, sustained.

Upon the rendering and entering of which said judgment the following opinion of the court was filed, in the words and figures following, that is to say:

Supreme court.

JAMES HALL
vs.
THE STATE OF WISCONSIN.

This action was commenced in this court to recover for alleged services as a commissioner of the geological survey of the State from March, 1862, to March, 1863. The plaintiff was appointed such commissioner by chapter 40, laws of 1857; and in March, 1858, the governor entered into a contract with him, as prescribed in said act, to continue in force five years. The plaintiff received the salary fixed in the contract until March, 1862, at which time the act of 1857 was unconditionally repealed. The legislature has refused to pay the claim. The foregoing facts are stated in the complaint.

17 The attorney-general has interposed a demurrer to the complaint, alleging as grounds of demurrer, 1, that the complaint fails to state a cause of action; and, 2, that the statute of limitations has run against the plaintiff's demand.

LYON, J.:

Several questions were ably argued at the bar, but the one which underlies all of the others is, Did the repeal of the act of 1857 (chap. 40) providing for a geological and agricultural survey of the State terminate the salaries of the commissioners thereby appointed? If the commissioners were public officers, there can be no doubt that the repeal of the act appointing them and appropriating money to pay them terminated both the office and the right to the salaries which pertained to the office. In such case the repeal of the act of 1857 does not impair the obligation of contracts within the meaning of the Constitution of the United States, which ordains that no State shall pass any law impairing the obligation of contracts. (Art. I, sec. x, § 1.) It was so held in the Dartmouth College case (4 Wheat., 627 to 630), and is the settled law.

It may as well be remarked here as elsewhere, that the fact that the law of 1857 provides for the making of a formal contract is not considered important or very significant. Every public officer who is required
by law to execute, and who does execute, a bond conditioned gen-
18 erally or specifically for the faithful discharge of the duties of his
office, is equally under contract and equally sustains a contract relation to the State; yet, unless prohibited by the constitution, there is no doubt of the power of the legislature to abolish the offices and terminate the salaries pertaining thereto. The object of requiring the commissioners to enter into a contract with the governor seems to have

been to enable the latter to fix the specific salary to which each commissioner should be entit'ed, and to prescribe the specific service which should be rendered by each. Had the legislature fixed the salary and prescribed the service, in the act itself, omitting entirely the contract clause, the case would have been the same in principle.

The question seems, therefore, were the commissioners public officers? When the law of 1857 was enacted, the State was comparatively new. It was known to contain immense agricultural and mineral resources, but the extent and value of these, in large portions of the State, were not accurately known. It was then (as it now is) the policy of the State to encourage settlement and the investment of capital therein. To this end it was essential that authentic information concerning the resources of the State should be collected and disseminated. The act of 1857 ap-
pointed commissioners (of whom the plaintiff was one) to collect
19 such information, and other legislation provided for the appoint-
ment of still other commissioners to disseminate abroad the information thus collected. Of course, allusion is here made to commissioners of immigration.

The geological survey commissioners were appointed directly by the legislature; no specific term of office was fixed (except by the governor, whose power to do so may well be doubted); provision was made by law for removing them for cause and for filling vacancies; their salaries were paid out of the State treasury, and their functions were not of merely private, local or temporary concern, but related to the material and permanent interests of the whole State. The duty imposed upon them was an important public trust to be exercised for the benefit of all of the people of the State, and could only be discharged properly by gentlemen of high attainments in physical science.

With this brief statement of the objects of the law of 1857 and the nature of the duties imposed upon the commissioners, we are ready to consider the legal principles which must control the determination of the question under consideration.

It may safely be asserted that any person charged by law with the performance of public functions affecting the general interests of society, especially if he be elected thereto by the people or appointed directly
by the legislature and who receives his compensation out of the
20 public treasury, is a public officer, and as such can have no vested
right in his office, unless secured by the constitution. There is a class of cases which give a more strict construction to the term office as used in constitutional clauses providing by whom certain officers shall be appointed, and restricting eligibility to office. United States ex rel Noyes vs. Hatch, 1 Pinney, 182, and several Pennsylvania cases there cited belong to that class.

But for obvious reasons we think that no such limited construction should be given to the term in the present case. The legislation of a State affecting its material interest, if wise, will be adjusted to and governed by the ever changing circumstances of the people. As new interests arise they will be properly cared for, and all interests will receive the fostering care of the legislature within the limits of legitimate legislative action. To accomplish this, it is essential that the legislature should be free to act as the exigencies of particular circumstances may require, untrammelled by vested rights under previous enactments. If it is in the power of one legislature to create offices involving contract relations, for long terms and with large salaries attached thereto, and to give the incumbents a vested right to the offices and salaries, subsequent legislatures might not be thus free to act as the public good

21 should require. We believe that one legislature has no power
thus to tie the hands of a subsequent legislature, and that to hold otherwise would be to introduce a new, unsound and most dangerous principle into the jurisprudence of our State, one which would almost necessarily result in great evil to the State.

It may be entirely proper to adopt the strict rule of construction in cases which concern eligibility or the right to make appointments to public office, but in a case like this where the question concerns the power of the legislature to abolish the office and terminate the salary, we think the more liberal construction should prevail. It is not conceded, however, that, were the strict rule adopted, the result in this case would be different. We are strongly inclined to think it would not.

It may be difficult to draw the exact line between an office and a mere service or employment, but as already observed when public functions are conferred by law upon certain persons elected by the people or appointed by the legislature, if those functions concern the general interests of the State, and are not of a nature merely local or temporary, such persons are public officers, especially if they are paid a salary for their services out of the public treasury; but an officer may be authorized to
contract with and employ other persons to render service in his
22 department, (as clerks, messengers, agents, and the like), who
would not be public officers. I suppose there is no doubt that the regents of the university are officers, but it was held in Butler vs. The Regents, &c., 32 Wis., 124, that a professor in the State University appointed by the regents is not a public officer in any sense that excludes the existence of a contract relation between himself and the board that employs him. His relation to the board was likened to that of the teacher of any public school to the district by whom he is employed, which beyond all question is purely a contract relation. Many other illustrations will readily suggest themselves to the mind.

Without attempting to lay down any rule by which the line between an office and a mere employment can always be found, we think it must be held that the plaintiff was a public officer in such sense that he could have no vested rights in his office, and hence that the office and the salary pertaining thereto were abolished by the repealing act of 1862. Having reached this conclusion, we are relieved from considering the other questions argued by the learned counsel.

It follows that the demurrer to the complaint must be sustained.

23 And afterwards, to wit, on the 9th day of June, A. D. 1876,
the following further proceedings were had in said cause in the words and figures following, that is to say:

JAMES HALL, PLAINTIFF,
vs.
THE STATE OF WISCONSIN, DEFENDANT.

The said demurrer of the said defendant to the complaint of the plaintiff herein having been sustained, and the said plaintiff having failed to amend his said complaint or to take any further proceedings in said action, now, on motion of the attorney-general of said State of Wisconsin, it is ordered and adjudged that the said plaintiff's complaint herein be, and the same is hereby, dismissed, and that the said defendant do have and recover of the said plaintiff the sum of eleven dollars, the disbursements in said action.

And afterwards, to wit, on the 30th day of October, A. D. 1876, the following certificate of E. G. Ryan, chief justice, was filed, in the words and figures following:

STATE OF WISCONSIN:

In supreme court.

JAMES HALL, PLAINTIFF,
vs.
THE STATE OF WISCONSIN, DEFENDANT.

24 I hereby certify that in the above named case there was drawn in question the validity of the statute of the State of Wisconsin, passed and approved on the 21st day of March, 1862, entitled "An act to repeal chapter forty of the general laws of 1857, entitled 'An act to provide for the geological and agricultural survey of the State,' and chapter 334 of the general laws of 1860, entitled 'An act to perfect the geological survey of the State,'" said act being chapter 116 of the general laws of Wisconsin for the year 1862, on the ground that said act was repugnant to section 10 of Article I of the Constitution of the United States, as being a law impairing the obligation of the contract sued upon by the plaintiff and mentioned and set forth in his complaint in the action, and that the decision of the court was in favor of the validity of said statute. I further certify that the question of the validity of said statute, so drawn in question, was the sole question decided by the court in the case, and that said statute was so held to be valid on the ground, as shown by the opinion of the court, that, by the true construction of chapter forty of the general laws of the State of Wisconsin for the year 1857, and which was by the said statute repealed, no contract was entered into between the plaintiff and the defendant, the obligation of 25 which could be impaired by such repeal, and because the so-called agreement mentioned and set forth in the complaint of the plaintiff constituted a contract between the State of Wisconsin and the plaintiff only as a public officer of the State, subject to the legislative authority of the State.

E. G. RYAN,
Chief Justice Supreme Court of Wisconsin.

(Endorsed:) State of Wisconsin, in supreme court. James Hall, plaintiff, vs. The State of Wisconsin, defendant. Certificate of chief justice. Filed Oct. 30, 1876. L. F. Kellogg, clerk sup. ct. Wis.

26 Know all men by these presents, that we, S. N. Dickinson, of the village of Sparta, in the county of Monroe and State of Wisconsin, and M. R. Gage, of the village of Sparta, in the county of Monroe and State of Wisconsin, are held and firmly bound unto the State of Wisconsin in the full and just sum of five hundred dollars lawful money of the United States, to be paid to the said State of Wisconsin, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this 17 day of May, A. D. 1876.

Whereas, lately, at a term of the supreme court of the State of Wisconsin, begun and held at the city of Madison, in said State, on the second Tuesday, to wit, the eleventh day, of January, A. D. 1876, in a suit depending in said court between James Hall, plaintiff, and the state of

Wisconsin, defendant, judgment was, on the ninth day of June, A. D. 1876, during said term, rendered against the said James Hall for the sum of eleven dollars and cents, costs of suit, and the said James Hall having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid
suit, and a citation directed to the said State, citing and admon-
27 ishing the said State to be and appear at a Supreme Court of the
United States, to be holden at Washington, the second Monday of October, 1877:

Now, the condition of the above obligation is such, that if the said James Hall shall prosecute his said writ of error to effect, and answer all costs if he fail to make his said plea good, then the above obligation to be void; else, to remain in full force and virtue.

S. N. DICKINSON. [SEAL.]
M. R. GAGE. [SEAL.]

Sealed and delivered in presence of—
THOS. B. TYLER.

UNITED STATES OF AMERICA,
Western District of Wisconsin:

S. N. Dickinson, one of the persons named in and who executed the within bond, being duly sworn, says, that he resides at the village of Sparta, in said district, and that he is worth the sum of two hundred dollars over and above all his debts and liabilities, and over and above all property exempt by law from attachment or execution, and further says not.

S. N. DICKINSON.
M. R. GAGE.

Subscribed & sworn to before me this 17th day of June, A. D 1876.

THOS. B. TYLER,
U. S. Commissioner.

Approved by me Oct. 31, 1876.

DAVID DAVIS,
Asso. Jus. S. C. U. S.

28 The United States of America to the State of Wisconsin, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Wisconsin, wherein James Hall is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the honorable David Davis, associate justice of the Supreme Court of the United States, this thirty-first day of October, in the year of our Lord one thousand eight hundred and seventy-six.

DAVID DAVIS,
Asso. Jus. S. C. U. S.

29 I hereby admit due service upon me of a copy of the within citation at Madison, this 24th day of November, A. D. 1876.

A. SCOTT SLOAN,
Att'y Gen'l.

Filed Nov. 25, 1876.

L. F. KELLOGG,
Clerk Sup. Ct., Wis.

30 **State of Wisconsin.**

In supreme court.

James Hall, plaintiff,
vs.
The State of Wisconsin, defendant.

I hereby certify that in the above-named case there was drawn in question the validity of the statute of the State of Wisconsin, passed and approved on the 21st day of March, 1862, entitled "An act to repeal chapter forty of the general laws of 1857, entitled 'An act to provide for the geological and agricultural survey of the State,' and chapter 334 of the general laws of 1860, entitled 'An act to perfect the geological survey of the State,'" said act being chapter 116 of the general laws of Wisconsin for the year 1862, on the ground that said act was repugnant to section 10 of article I of the Constitution of the United States, as being a law impairing the obligation of the contract sued upon by the plaintiff, and mentioned and set forth in his complaint in the action, and that the decision of the court was in favor of the validity of said statute; I further certify, that the question of the validity of said statute so drawn in question was the sole question decided by the court in the case, and that said statute was so held to be valid on the ground, as shown by the opinion of the court, that by the true construction of chapter forty of the general laws of the State of Wisconsin for the year 1857, and which was by the said statute repealed, no contract was entered into between the plaintiff and the defendant, the obligation of which could be impaired by such repeal, and because the so-called agreement mentioned and set forth in the complaint of
31 the plaintiff constituted a contract between the State of Wisconsin and the plaintiff only as a public officer of the State, subject to the legislative authority of the State.

E. G. RYAN,
Chief Justice Supreme Court of Wisconsin.

(Indorsed:) State of Wisconsin, in supreme court. James Hall, plaintiff, vs. The State of Wisconsin, defendant. Certificate of chief justice. Filed Oct. 30, 1876. L. F. Kellogg, clerk sup. c't, Wis.

32 Supreme Court of the United States of the October term, in the year of our Lord one thousand eight hundred and seventy.

James Hall, plaintiff in error,
v.
The State of Wisconsin, defendant in error.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said James Hall by L. S. Dixon, his attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit, that the agreement mentioned and set forth in the complaint aforesaid does constitute a contract between the said James Hall and the said State of Wisconsin, the obligation of which is protected by section 10 of article I of the Constitution of the United States, and not subject to modification, impairment, or repeal by the legislative authority of the said

State of Wisconsin; and, also, there is error in this, that the
33 statute of the said State of Wisconsin, mentioned and referred to in the complaint aforesaid, and passed and approved on the 21st day of March, 1862, being chapter 116 of the general laws of the said State of Wisconsin for the year 1862, does impair the obligation of the aforesaid contract, and is repugnant to said section 10 of article I of the Constitution of the United States; and, also, further, there is error in this, that the final judgment aforesaid, by the record aforesaid, appears to have been given for the said State of Wisconsin against the said James Hall, whereas, by the law of the land, the said judgment ought to have been given for the said James Hall against the said State of Wisconsin, as demanded in the complaint aforesaid by the said James Hall.

And the said James Hall prays that the judgment aforesaid may be reversed, annulled, and altogether held for nought, and that he may be restored to all things which he hath lost by occasion of the said judgment.

L. S. DIXON,
Attorney for Plaintiff in Error.

(Indorsed:) In the Supreme Court of the United States. James Hall, plaintiff in error, v. The State of Wisconsin, defendant in error. Assignment of errors. L. S. Dixon, attorney for plaintiff in error. Filed Nov. 25, 1876. L. F. Kellogg, clerk sup. ct., Wis.

34 **Supreme court.**

JAMES HALL, PLAINTIFF,
vs.
THE STATE OF WISCONSIN, DEFENDANT.

I, La Fayette Kellogg, clerk of the supreme court of the State of Wisconsin, do hereby certify that the above and foregoing is a true and correct transcript of all the record and proceedings now on file and of record in my office, with all things concerning the same in the above-entitled cause; that the original writ of error, the citation with its service endorsed thereon, an assignment of errors, a certificate of the chief justice, and a copy of the bond are appended to the return herein, and that they are all returned to the Supreme Court of the United States in obedience to the command of the writ of error thereto annexed.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Madison, this 10th day of October, A. D. 1877.

[SEAL.] LA FAYETTE KELLOGG,
Clerk Sup. Court, Wisconsin.

(Indorsed on cover:) No. 302. James Hall, pl'ff in error, vs. The State of Wisconsin. Wisconsin sup. court. Filed 15 October, 1877.

OFFICE SUPREME COURT U. S.
FILED
FEB 14 1880
D. W. MIDDLETON, Clerk.

Supreme Court of the United States.

JAMES HALL, PLAINTIFF IN ERROR,

v.

THE STATE OF WISCONSIN.

BRIEF FOR PLAINTIFF IN ERROR.

L. S. DIXON,
Of Counsel for Plaintiff in Error.

BURDICK & ARMITAGE, Printers.

Supreme Court of the United States.

JAMES HALL, Plaintiff in Error,
v.
THE STATE OF WISCONSIN.

Brief for Plaintiff in Error.

STATEMENT.

This is a writ of error to the Supreme Court of the State of Wisconsin. The plaintiff in error, Professor James Hall, of Albany, in the State of New York, was also the plaintiff in the court below. The action was an original one instituted in the Supreme Court of the State, under the constitution and laws of the State, to recover a sum of money, $2,000.00 and interest from the 3d day of December, 1863, which is due to the plaintiff for one year's services performed by him *under a contract with the State*, whereby he became and was one of three commissioners designated and appointed by the legislature to make a geological, mineralogical and agricultural survey of the State. The statute under which the action was brought, as contained in the present revision of the laws of the State and as it has always existed, together with the several acts of the legislature involved in the action and necessary to be examined by the court, is transcribed at length in the appendix to this brief.

On the 29th day of May, 1858, the plaintiff in error, through the Governor of the State, and as authorized by the fourth section of the act of March 3d, 1857, entered into a contract with the State whereby he agreed to serve and to devote his time and attention to the duties of his department of the survey, according to the division and distribution of labor which had been agreed upon, and in all things faithfully to fulfill the obligations imposed upon him by the act, *until the 3d day of March, A. D.* 1863. An express provision of the contract was: "This contract to continue until the 3d day of March, A. D. 1863, unless the said Hall shall be removed for incompetency or neglect of duty, as provided in section five of said act, or unless a vacancy shall occur in his office by his own act or default." See record, p. 3, folios 8 and 9, where the entire contract appears as exhibit "A," annexed to the complaint.

The plaintiff in error continued the performance of his labors and the rendition of his services under the contract until the expiration of the time specified in it, that is, until the 3d day of March, 1863; no removal for incompetency or neglect of duty having taken place, and no complaint made or suggested against him on that ground, and no cessation, vacancy, or default in his labors having occurred at any time. For the period ending March 3d, 1862, his compensation of $2,000.00 a year, under the contract, was promptly paid by the State. But for the year beginning March 3d, 1862, and ending March 3d, 1863, the State refused to pay, on the ground that the act of March 3d, 1857, under which the contract was made, had been repealed by the act of March 21st, 1862. This repeal was without the consent and against the protest of the plaintiff in error, who continued the performance of his labors under the contract notwithstanding such attempted repeal. It was to recover, with interest, the annual compensation so contracted to be paid for the year beginning March 3d, 1862, and ending March 3d, 1863, and where the services were for the most part rendered after the supposed repeal, that the action was instituted in the court below. These facts, as well as the entire case of the plaintiff in error, appear by his complaint found on pages 2 and 3 of the printed record, and which constitutes, perhaps, as concise an abstract or statement of the case as can be presented.

To the complaint there was a demurrer on the part of the State upon two grounds, viz:

1st. That the complaint did not state facts sufficient to constitute a cause of action, and

2d. That it appeared on the face of the complaint that no action had accrued to the plaintiff within six years next previous to the commencement of the action.

The defense of the statute of limitation was treated as wholly unavailing, and ignored by the court below, and the demurrer sustained and decision rendered in favor of the State on the ground of objection first stated in the demurrer, namely, that the complaint did not state facts sufficient to constitute a cause of action.

In determining the sufficiency of the complaint the decision of the court turned wholly upon the consideration of two questions:

1st. Whether the act of March 3d, 1857, and the amendatory act of April 2d, 1860, together with the agreement in writing, entered by the governor on behalf of the State with the plaintiff in error, constituted a contract between the State and the plaintiff in error, the obligation of which was protected by Section 10 of Article I. of the constitution of the United States; and

2d. Whether the repealing act of March 21st, 1862, was repugnant to the same clause of the constitution of the United States, and, therefore, invalid as a law, impairing the obligation of a contract.

The court decided the first question in the negative, from which a negative decision of the second followed, as a matter of course.

That such were the true and only questions considered and such the only ground of decision, will appear not only from the opinion of the court returned as part of the transcript of the record, but also from the certificate of the Chief Justice, likewise contained in the record. See record, pages 7 to 10 inclusive.

Final judgment was rendered in favor of the State and against the plaintiff in error upon the demurrer so sustained, and from that judgment this writ of error was sued out.

ASSIGNMENT OF ERRORS.

The errors already assigned in the record are as follows:

I.

The court erred in holding that the agreement mentioned and set forth in the complaint did not constitute a contract between the plaintiff in error and the State of Wisconsin, the obligation of which was protected by Section 10, Article I. of the constitution of the United States.

II.

The court erred in holding that the act of March 21st, 1862, did not impair the obligation of said contract, and was not repugnant to Section 10, Article I. of the constitution of the United States.

III.

The court erred in giving final judgment for the State and against the plaintiff in error; whereas, by the law of the land, such judgment should have been given for the plaintiff in error and against the State, as demanded in the complaint.

POINTS OF LAW.

I.

Whether the written agreement, entered into by the Governor for the State with the plaintiff in error, constituted a contract such as to be impaired by subsequent laws, is a question for this court to decide. This proposition is maintained by many decisions, and constitutes the very essence of the jurisdiction of this court in this class of cases.

University v. People, 99 U. S. 313, 321 and cases there cited.

And such jurisdiction, to determine whether there was a contract or not, extends to every underlying question upon which the existence of the contract may depend. It includes not only the construction and effect of the instrument, writing, or thing claimed to be a contract, but also the construction and effect of the laws and constitution of the State under which the so-called contract was made, or which may be involved in determining whether it is a contract or not. It includes likewise the determination of the capacity of the contracting parties, one or both, when that is a point in controversy or element to be considered and determined in the decision of the main question. In other words, it extends to and includes every subordinate proposition, whether of State constitution or State law, State capacity or individual capacity, which may be brought forward or urged and considered and determined in passing upon and deciding the main question—every preliminary or subordinate proposition relied upon, either to show that there was or was not a contract. Every proposition of this kind, considered and determined by the State court, is open to re-consideration and re-determination by this court, and the decision of the State court is in no respect whatever binding upon this court. This court must decide for itself, according to its own convictions of law and justice, as if no State decision had ever been made. Such is the clear result of the decisions and the clear duty of this court, as the great conservator of right between private individuals and the several States, where the former claim the protection of the provision of the federal constitution involved in cases like the present. The duty of protecting and enforcing the obligation of a contract, necessarily carries with it the power and duty of determining the existence and nature of the contract in all particulars, and in no other way can effect be given to the constitutional prohibition by this court as the final arbiter of all cases arising under it. "The writ of error to a State court would be no protection to a contract, if we were bound to follow the judgment which the State court had given and which the writ of error brings up for revision here." TANEY, C. J., in *Ohio Trust Company* v. *Debolt*, 16 How. 432. As observed by Mr. Justice MILLER in *Gelpcke* v. *Dubuque*, 1 Wallace 216: "It would be the merest sham."

II.

The agreement in writing entered into between the Governor, on behalf of the State, and the plaintiff in error, and signed, sealed and delivered by both parties, was a contract the obligation of which is protected by the federal constitution, against subsequent State law the effect of which was to impair or destroy it. It would be mere waste of words to enter into any analysis of it here, or to comment on its nature and character as a contract. A glance at the record where it is found will fully satisfy the court on this point. It has the form and substance, and every element and part of a complete and perfect contract as ever was made. The parties to it intended it to be contract and so named it in the instrument, and it is expressly so denominated by the legislature in the acts authorizing and ratifying it.

Indeed, this proposition is not seriously questioned by the court below, as it cannot be seriously questioned anywhere, for the court say "that the fact that the law of 1857 provides for the making of a *formal contract* is not considered important or very significant."

III.

The contract so executed by the Governor for the State was fully authorized by the legislature, and so bound the State.

The third section of the act of 1857 specifically empowered and required the Governor to "make a written contract with each of the commissioners aforesaid, expressly stipulating and setting forth the nature and *extent* of the service to be rendered by each, and the compensation therefor," subject to the limitation as to compensation and expenses therein prescribed, and which limitation was duly observed in the making of the contract.

It is obvious that the *extent* of the service to be rendered, and for which the Governor was authorized to contract, related partially, if not wholly, to the period or length of time during which the service was to continue. Such is the natural and plain import of the word in the connection in which it was used, that is, to define a service the compensation for which was, in the language of the section, to be fixed by the contract "at a certain rate per annum." Where such is the kind of service or employment, an annual service and at an annual compensation, it seems impossible fairly and reasonably to separate or exclude the idea of length of time of such service from an authority broadly given to stipulate for and fix the extent of the service. That an annual service, a service for one year at least, and for more years than one if the Governor thought necessary, was contemplated and intended by the legislature, is obvious from the context. How, then, we ask, can the period of service, the time or number of years it was to continue, which the legislature had purposely omitted definitely to fix and declare by the act, be excluded from the extent of the service for which the Governor was expressly authorized to stipulate? It is respectfully submitted that it cannot be, and that, if it be true that the word was not used solely for the purpose of declaring the authority of the Governor in this particular, yet that it plainly included and conferred such authority. The Governor so understood it, the plaintiff in error so understood it, and so must the legislature; for, as will presently be seen, the legislature subsequently clearly recognized and ratified the action of the Governor in the premises.

The intention of the legislature that there was to be a period of service, for which the Governor was authorized to contract, extending through a number of years not exceeding six, is further manifest by the sixth section of the act where appropriation was made for the payment of the compensation of the commissioners at the maximum rate fixed by the act, for the term of six years. Subject to the provisions of that section, which might doubtless be held to operate as a limitation upon the power of the Governor, his authority to stipulate and contract for the period of service was unrestricted.

IV.

But if there be any doubt about the authority of the Governor, in the first instance, to stipulate for the period of service specified in the contract, the question is put to rest by the act of 1860, which recognized the contract as a valid, subsisting obligation, and operated as a direct and express confirmation of the authority which the Governor had assumed to exercise. The contracts with the commissioners, this with the other two, are expressly referred to by description and date in the third section, which provides for withdrawing from the treasury such portion of the moneys appropriated by the act of 1857, as was not drawn previous to the signing of the contracts, and "which shall not be required to carry into effect the provisions of the contracts." This was an express continuation of the appropriation previously made to satisfy and fulfill the terms and conditions of the contract. It was such a continuation, by the legislature, to satisfy and fulfill the terms and conditions of the contract, with the contract then before it, and its terms, conditions and contents well known and well understood. It was equivalent to an appropriation then made by the legislature, with the contract before it, of moneys to carry out and give effect to its provisions. It is submitted that this was a clear ratification of the act of the Governor, and cured and obviated any previous want of authority on his part, if by possibility it can be said that any such want existed when the contract was made. The legislature having thus clearly recognized his authority, it is not for the courts to say he did not possess it, unless it shall be found that the legislature itself possessed no power to make the contract or to authorize it to be made, which is a question hereafter to be discussed.

V.

The court below, as will be seen by the opinion, held that there was no contract between the plaintiff in error and the State upon two grounds, one of which was that the plaintiff in error was a public officer of the State, and for that reason the agreement entered into on the part of the State through the Governor with him established no different relation between him and the State than that ordinarily existing between the State and persons appointed or elected to public office, and whose offices may be abolished and the official tenure cut short or terminated at the will of the legislature creating them.

So far as the error of this proposition depends upon the construction and effect of the acts of the legislature and of the agreement, these have already been considered in the points above submitted.

The proposition, if a public officer, therefore no contract existed and the repealing act was valid, is asserted, not argued, reasoned, or in any manner explained by the court, unless it be by the other part of the opinion in which the other ground of decision is stated, namely: that the legislature itself had no power to enter into a contract with the plaintiff in error respecting his service or the time for which it should continue, he being a public officer of the State. The proposition is announced in these words: "If the commissioners were public officers, there can be no doubt that the repeal of the act appointing them and appropriating money to pay them, terminated both the office and the right to the salaries which pertained to the office." Some discussion then takes place as to whether the commissioners were public officers, but none as to the nature of the agreement or whether it constituted a contract. A doubt is cast upon the authority of the Governor under the act to agree as to the term of service, but it is not decided that he had no such authority. The assumption rather seems to be that the Governor was not so authorized because such authority could not be given by the legislature, and that public official relation being established between the plaintiff in error and the State, relation by contract concerning the same service or duties, or the period of their continuance, could not for that reason at the same time exist. But whether it was upon this or some other ground the proposition was rested, is perhaps strictly immaterial here to inquire.

The proposition that official relation excludes contract relation between the State and the officer, unless there be something in the constitution of the State restraining or prohibiting the legislature, is not only unsustained by any decision outside of that here in question, but is directly opposed by the great body of decisions in this court and elsewhere, in which the full and absolute power and capacity of the States, through their legislatures, to enter into contracts, has been uniformly and unqualifiedly sustained. The only authority cited by the court in support of the proposition, is the language of the CHIEF JUSTICE in *Dartmouth College v. Woodward*, 4 Wheaton, 627 to 630, which by no means sustains it. The CHIEF JUSTICE was there considering the ordinary case of a public office, mere election or appointment to which, does not, as is universally acknowledged, constitute a contract between the State and the officer. Whether a contract could exist, whether the officer could bind himself to a certain term of service, and the State itself to a certain term of employment, were questions which were not considered, and there is nothing in the language which affords the slightest ground for inferring that such a contract cannot be made, and when made, that it would not be within the protection of the federal constitution. Mr. JUSTICE STORY, whose views fully coincided with those of the CHIEF JUSTICE, was more explicit upon this subject in his opinion delivered in the same case. At page 694 he says: "It is admitted that the state legislatures have power to enlarge, repeal and limit the authorities of public officers in their official capacities, in all cases where the constitutions of the States respectively do not prohibit them; and this, among others for the very reason, that there is *no express or implied contract*, that they shall always, during their continuance in office, exercise such authorities. But when the legislature *makes a contract* with a public officer, as in case of a *stipulated salary* for his services *during a limited period*, this, during the limited period, is just as much a contract, within the purview of the constitutional prohibition, as a like contract would be between two private citizens."

VI.

The other ground of decision below was that the State, *Tingey*, 5 Pet. 115, 128, said: "Upon full consideration of this subject we are of opinion that the United States have such a capacity to enter into contracts. It is, in our opinion, an incident to the general right of sovereignty, and the United States, being a body politic, may, within the sphere of the constitutional powers confided to it, and through the instrumentality of the proper department to which these powers are confided, enter into contracts not prohibited by law, and appropriate to the just exercise of those powers. To adopt a different principle would be to deny the ordinary rights of sovereignty, not merely to the general government, but even to the state governments, within the proper sphere of their powers, unless brought into operation by express legislation.. A doctrine to such an extent is not known to this court as ever having been sanctioned by any judicial tribunal."

"Every sovereign State is of necessity a body politic, or artificial person, and as such capable of making contracts." Mr. JUSTICE GRIER, in *Cotton v. United States*, 11 How. 229, 232.

The legislature of a State, if not restrained by its constitution, is capable of doing so and of binding the State when acting upon any subject within its jurisdiction. *State Bank of Ohio v. Knoop*, 16 How. 369.

This capacity of the legislature has been recognized and affirmed by this court, not only in cases of charters of incorporation granted for the private benefit and purposes of the corporators, but also in cases involving the future exercise by the legislature of some of the essential attributes of sovereignty. It has been held to include, as the proper subjects of contract, the power of taxation and the power to grant exclusive franchises in matters of great public concern. The power of taxation may be so controlled by contract as not in the future to be exercised in a manner contrary to the contract. The grant of an exclusive privilege to construct and operat- a railroad between certain termini, suspends the power to authorize the construction and operation of a second railroad between the same termini. And so of a right granted to build the only bridge over a river between specified limits, or a right to establish and own the only ferry at a certain point. If, in matters like these, relating to important public interests and involving the highest attributes of sovereignty, the legislature, having regard to what it deems for the greatest good to the public, may contract for and bind the State, upon what principle, we ask, shall it be said of an office which it is in the power of the legislature to create and to prescribe and declare in all respects its character of continuance, that the legislature may not contract with the appointee, properly discharging his duties, that he shall hold it and receive the salary for a specified period of time? It is submitted, as a proposition not involved in doubt or perplexity, that the legislature may do so, and that to hold otherwise would be to deprive the States of a clear attribute of sovereignty, often most necessary and useful to be exercised in the discharge of the proper functions of government.

VII.

The court below held that it was incompetent for the legislature to contract with the plaintiff in error for a specific term of service, upon what it conceived to be a primary governing principle pertaining to all State governments, that the legislature, where a public office is concerned, has not the power to tie up its own hands by the creation of any vested right in or to the office or the salary given for the performance of its duties. The reason assigned was that the legislature, each succeedone, should always be at liberty to adjust the material interests of the State according to the then existing circumstances and wants of the people; and as these circumstances and wants are continually changing, so this power of the legislature to bind by contract ought not to and did not exist. It was said that the power would be a most dangerous one, since by the exercise of it great evil might result to the State. The reasoning, carried to its logical conclusion, would go far towards disproving the power of the State or the legislature to contract in any case or under any circumstances. It would in fact disprove and destroy such power altogether. The legislature, in any instance, conceiving that the material interests of the State and wants and circumstances of the people for the time being so required, might undo and annul what any previous legislature had done. Serious refutation of that kind of logic which disproves the existence of a power by showing the dangers and inconveniences which might arise from an unwise or improvident exercise of it, would hardly be tolerated at this day and in this court. It is confidently submitted there is no such principle limiting the power of the legislature with respect to any office it is competent for it to create, and the tenure, duties, duration and salary of which are subject to legislative discretion and control. All these may be fixed by contract, and irrevocably, at the time the office is created, if in the judgment of the legislature the public good so requires.

VIII.

But if there be any such primary general principle applicable to any public office or officer, it does not extend to an office or officer of the kind here in question. It has never before been claimed or hinted by any court or writer, any advocate of the principle, that its operation would extend beyond those functions and powers which are strictly governmental in their nature, and consequently should remain in full vigor and unimpaired, to be exercised by the legislature at all times as the public exigencies may demand. It has never before been supposed by any to extend to a service or employment, official though it may have been denomiinated, which consisted in the performance of mere mental or manual labor, or both, and which involved the exercise of no governmental power or function, the discharge of no governmental duty whatever. Such was the character of the service to be rendered by the plaintiff in error. It involved the exercise of no governmental power, the performance of no governmental duty, executive, administrative or otherwise. It was an engagement to perform certain mental and bodily labor for the State,—labor quite outside of and unconnected with the administration and management of the affairs of the government properly so called. It was an engagement which might have been entered upon and fulfilled as well without official designation and quality as with.

Mr. Greenleaf, who is one of the foremost advocates of the principle that legislative powers cannot be renounced or parted with by contract, in a note to his Cruise on Real Property, Vol. II., p. 67, says: "It is with great deference submitted that an important distinction should be observed between those powers of government which are essential attributes to sovereignty, indispensable to be always preserved in full vigor, such as the power to create revenues for public purposes, to provide for the common defense, to provide safe and convenient ways for the public necessity and convenience, and to take private property for public uses, and the like, and those powers which are not thus essential, such as the power to alienate the lands and other property of the State, and *to make contracts of service* and of purchase and sale, or the like. Powers of the former class are essential to the constitution of society, as without them no political community can well exist; and necessity requires that they should continue unimpaired."

It is insisted that upon any proper application of the principle invoked by the court below, the case at bar is not within it.

IX.

But the court below was wrong in holding that the plaintiff in error was a public officer at all. He was not, in any legitimate and proper sense of the word. An architect or builder, styled by the legislature a commissioner, with whom the Governor should be authorized, by statute, to contract for the building of a State capitol, and for which moneys should be appropriated, might, with equal propriety, be held a public officer, and for that reason the statute repealable and the contract revocable, or without obligation, at the will or caprice of the legislature, at any moment and in any stage of the work being performed under it. And so of a contract entered into under like circumstances for the construction of a canal, bridge or road, or the improvement of a harbor, or the doing of any other public work. The obligation of the contract would be without protection and the contractor without remedy against any action of the legislature because of some apparent official designation which the legislature may have affixed. To call the contractor by a name which, under other circumstances might imply official relation, powers and duties, but which the particular case does not, would not make him a public officer. The plaintiff in error was an employe of the State, a laborer in its service, under a contract fairly and constitutionally made, and not a public officer; and for the State to seek to repudiate its obligation and deny his rights upon such a pretext, is a proceeding which, it is believed, cannot and will not receive the approbation of this court. The legislature, having called him from a distant State and other fields of profitable labor, upon an express promise to employ him for a specific period and at a certain fixed rate of compensation, could not arbitrarily dismiss him, or, by a repeal of the law under which the promise was made, withhold the reward justly due for his services.

Authorities to the effect that the plaintiff in error was not a public officer are quite numerous, but citation is deemed unnecessary beyond those referred to in the opinion of the court below. Two cases are there referred to, both earlier ones, in the same court, and in both of which the doctrine is clearly and emphatically opposed to that held in the present case. The one was the case of a professor in the State University, and the other that of a canal commissioner, provided for by an act of the legislature. In the latter (1 Pinney, 182) it was held that the term civil or public officers "embraces only those officers in whom a portion of the sovereignty is vested, or to whom the enforcement of municipal regulations or the control of the general interests of society is confided, and does not include such officers as canal commissioners."

It is a vicious rule of interpretation which disregards established precedents and overturns well-considered decisions for the sake of avoiding the obligation of a contract. If there is to be any straining for effect in such case, it should rather be to uphold than destroy such obligation.

X.

It appears on the face of the record and of the acts of the legislature, that the plaintiff in error was not, at the time of entering into the service of the State, nor during the continuance of it, a citizen or resident of the State of Wisconsin. He is described in the act of 1857 as of Albany, New York, and so in the contract, and so again in the act of 1860. It is well settled by the decisions of the same Supreme Court that a person, not a citizen and resident of the State, cannot be a public officer of the State.

State *ex rel.* Off v. Smith, 14 Wis. 497.
State *ex rel.* Schmit v. Murray, 28 Wis. 96.

The plaintiff in error was neither a citizen nor a resident of the State, and so could not have been a public officer of the State.

XI.

The question of the capacity of the State to enter into and bind itself by contract being one of general law, not local in its nature nor dependent on the construction of the State constitution or State laws, the decision of the State court is not binding upon this court on this ground, as well as upon the other ground that in all cases like the present this court must determine for itself every point and matter touching the existence and validity of the contract, the obligation of which is claimed to have been impaired.

Olcott v. The Supervisors, 16 Wallace, 678.

XII.

The judgment of the court below should be reversed, and final judgment rendered or ordered by this court in favor of the plaintiff in error for the amount of the debt due him, with interest, as admitted by the pleadings. The State having elected to rest its defense, the only one it has, upon the ground stated in the demurrer, and to stand by and proceed to final judgment on that ground in the Supreme Court of the State, the plaintiff in error, after the long and arduous and unequal struggle to which he has been forced in the maintenance of his just and constitutional rights, ought not to be longer baffled or delayed, but should have final judgment by this court in his favor, as under the law of congress may now be given. Such is the practice at common law, if judgment be given for the defendant on demurrer, and the plaintiff, bring a writ of error, and the judgment is reversed, the court shall also give such judgment as the court below should have given. 3 Bac. Abr. Title, *Error* (M.) 2. 2 Tidd's Pr. 1179, 1180.

The *quantum* of damages depending on figures or the calculation of the amount of principal and interest admitted to be due, no formal assessment or inquiry is necessary. The computation may be made by the clerk.

L. S. DIXON,
Of Counsel for Plaintiff in Error.

Jan. 30, 1880.

Appendix.

REVISED STATUTES, Chapter CXXXIX.

Of Actions Against the State.

Section 3200. It shall be competent for any person deeming himself aggrieved by the refusal of the legislature to allow any just claim against the State, to commence an action against the State, by filing a complaint, setting forth fully and particularly the nature of such claim, with the clerk of the Supreme Court, either in term-time or vacation. He shall, at the same time, file an undertaking with two or more sureties, to be approved by the State treasurer, to the effect that he will indemnify the State against all costs that may accrue in such action, and to pay to the clerk of said court all costs, in case the plaintiff shall fail to prosecute his action, or to obtain a judgment against the State, not exceeding one thousand dollars; and thereupon the action shall be placed upon the calendar.

Section 3201. The plaintiff, within ten days after having filed such complaint and undertaking, shall serve a copy of the complaint upon the attorney-general, together with a notice to answer or demur thereto, within a period of time not less than thirty days, from the time of such service; and the attorney-general shall thereupon be required to answer or demur within the time expressed in such notice.

Section 3202. The Supreme Court shall proceed to hear and determine such action. If an issue of fact shall be made in such action, which the court shall deem necessary to be tried by a jury, it shall certify such issue of fact to the Circuit Court of some county, and such court shall proceed, at the next regular term, to try the same by a jury, as in other cases; and the verdict rendered, together with the papers in the action received from the Supreme Court, shall be sealed up and returned to the clerk of the Supreme Court, with all convenient speed. At the request of either party, a bill of exceptions may be settled, as in other trials, by jury, and returned with the verdict; and, thereupon, the Supreme Court may enter judgment thereon, or again certify the same question of fact to the same or any other Circuit Court, to be tried and returned as above provided, and may grant a new trial of any issue of fact, as often as it shall be satisfied that there is good cause therefor. The judgment rendered by the Supreme Court in such action, shall be conclusive and final.

Section 3203. No execution shall issue against the State on any judgment, but whenever a final judgment against the State shall have been obtained in any such action, the clerk shall make and furnish to the Secretary of State a duly certified transcript of such judgment; and the Secretary of State shall thereupon audit the amount of damages and costs therein awarded, and the same shall be paid out of the State treasury.

CHAPTER 40, GENERAL LAWS OF 1857

[Published March 16th, 1857.]

AN ACT TO PROVIDE FOR A GEOLOGICAL AND AGRICULTURAL SURVEY OF THE STATE.

The people of the State of Wisconsin, represented in the Senate and Assembly, do enact as follows:

§ 1. James Hall, of Albany, N. Y., Ezra S. Carr and Edward Daniels, of Wisconsin, are hereby designated and appointed commissioners to make a geological, mineralogical and agricultural survey of the State, embracing a scientific and descriptive survey of the rocks, fossils and minerals of the State, full and complete assays of the ore and minerals, also of the soils and subsoils, with the classification and description of the same and their adaptation to particular crops and the best methods of preserving and increasing their fertility.

They shall also make a full collection of the rocks, ores and minerals, and whatever illustrates the economic geology of the State, and deposit the same in the rooms of the State University, or such other place as may be provided for the same, constituting a museum of practical and scientific geology; said commissioners shall also make full collections of soils, native fertilizers, cultivated and other useful plants, constituting a museum of practical and scientific geology, and deposit the same as aforesaid.

§ 2. Said commissioners shall arrange and distribute the functions of such survey by mutual agreement, and employ such assistants as may be deemed by a majority of them necessary to carry on the work.

§ 3. The Governor of this State shall make a written contract with each of the commissioners aforesaid, expressly stipulating and setting forth the nature and extent of the services to be rendered by each, and the compensation therefor, including the expenses of the department of the survey under charge of each commissioner.

Such contract shall expressly provide that the compensation to such commissioners shall be at a certain rate per annum, to be agreed upon, and not exceeding the rate of two thousand dollars per annum, and that payment will be made only for such part of the year as such commissioner may actually be engaged in the discharge of his duty as such commissioner.

§ 4. Should the Board of Regents of the State University neglect to make suitable provisions for the accommodation of the collection, it shall be the duty of the commissioners, with the advice and consent of the Governor, to provide suitable rooms elsewhere in the city of Madison.

§ 5. In case of any vacancy or vacancies occurring in the commission by this act provided, the Governor shall appoint some suitable person or persons to fill the same, and he may remove any member for incompetency or neglect of duty, after giving such member due notice of the charges against him, and a full opportunity to be confronted with his accusers, and to make his defence.

§ 6. To carry out the provisions of this act, the sum of six thousand dollars per annum for the term of six years is hereby appropriated, to be drawn from the treasury quarterly, on warrants of the Governor, and paid to the persons entitled to receive the same, which sum shall be in full for salaries of commissioners, assistants, rent of rooms and all other expenses incident to said survey, exclusive of printing the annual reports of said commissioners.

§ 7. This act shall take effect and be in force from and after its passage.

Approved March 3, 1857.

CHAPTER 334, GENERAL LAWS OF 1860.

[Published April 26, 1860.]

AN ACT [FOR AN ACT] TO PERFECT THE GEOLOGICAL SURVEY OF THE STATE:

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

Section 1. James Hall, of Albany, New York, is hereby constituted and appointed principal of the geological commission, established by chapter forty, of the General Laws of 1857, and is hereby vested with such general control and supervision of the geological survey of the State, as is not already expressly reserved to the several commissioners designated in said chapter.

Sec. 2. It shall be the duty of said James Hall to make a written contract with J. D. Whitney, which contract shall be approved by the Governor, providing for the completion, within the present year, of his survey and maps of the lead mines of the southwestern portion of the State, which maps shall include the whole of such district, and shall be constructed upon a uniform scale. A contract shall also be made in the same manner with Charles Whittlesey, for continuance of his survey of the mineral regions of Lake Superior.

Sec. 3. For the purpose of carrying into effect the provisions of the preceding section, the Governor is hereby authorized, upon the presentation of the proper vouchers, to draw from the treasury such a portion of the sum appropriated by said chapter forty, of the general laws of 1857, as was not drawn previous to the signing of the contract with the commissioners on the 29th day of May, A. D. 1858, and all that part of said appropriation, hereby authorized to be drawn by the Governor, which shall not be required to carry into effect the provisions of the contracts, as provided in the preceding section, shall be appropriated for the engraving of maps and drawings to illustrate the surveys therein provided for.

SEC. 4. This act shall take effect and be in force from and after its passage and publication.

Approved April 2d, 1860.

CHAPTER 116, GENERAL LAWS OF 1862.

[Published March 26, 1862.]

AN ACT to repeal chapter forty of the General Laws of 1857, entitled "An Act to provide for the Geological and Agricultural Survey of the State," and chapter 334 of the General Laws of 1860, entitled "An Act to Perfect the Geological Survey of the State."

The people of the State of Wisconsin, represented in the Senate and Assembly, do enact as follows:

SECTION 1. Chapter forty of the general laws of 1857, entitled "an act to provide for the geological and agricultural survey of the State," and chapter 334 of the general laws of 1860, entitled "an act to perfect the geological survey of the State," are hereby repealed.

SECTION 2. This act shall take effect and be in force from and after its passage and publication.

Approved March 21, 1862.